

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name Victor Hernandez  
(Last) (First) (Initial)

Prisoner Number K-31659

Institutional Address P.O. Box 8504 Fac D-3-128-L Coalinga Ca 93210

**FILED**  
FEB 27 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Victor Hernandez  
(Enter the full name of plaintiff in this action.)

vs.

JAMES YATES WARDEN PLEASANT VALLEY

STATE PRISON

(Enter the full name of respondent(s) or jailor in this action)

Case No. 08 1154  
(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

**(PR)**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

08-1154JF

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3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☒ No ☐

Motion to Suppress:

Yes ☐ No ☒

4. How did you plead?

Guilty ☒ Not Guilty ☐ Nolo Contendere ☐

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury ☐ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☒ No ☐

(c) Time of plea

Yes ☒ No ☐

(d) Trial

Yes ☒ No ☐

(e) Sentencing

Yes ☒ No ☐

(f) Appeal

Yes ☐ No ☒

(g) Other post-conviction proceeding

Yes ☐ No ☒

8. Did you appeal your conviction?

Yes ☐ No ☒

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☐ No ☐

Year: \_\_\_\_\_

Result: \_\_\_\_\_

Supreme Court of California

Yes ☐ No ☐

Year: \_\_\_\_\_

Result: \_\_\_\_\_

Any other court

Yes ☐ No ☐

Year: \_\_\_\_\_

Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes \_\_\_\_\_ No \_\_\_\_\_  
 2 (c) Was there an opinion? Yes \_\_\_\_\_ No \_\_\_\_\_  
 3 (d) Did you seek permission to file a late appeal under Rule 31(a)?  
 4 Yes \_\_\_\_\_ No \_\_\_\_\_

5 If you did, give the name of the court and the result:  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
 9 this conviction in any court, state or federal? Yes ☒ No \_\_\_\_\_

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
 11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
 12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
 13 for an order authorizing the district court to consider this petition. You may not file a second or  
 14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
 15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
 17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Superior Court  
 19 Type of Proceeding: Habeas Petition  
 20 Grounds raised (Be brief but specific):  
 21 a. ~~VIOLATION OF PLEA AGREEMENT~~  
 22 b. VIOLATION OF DUE PROCESS  
 23 c. INEFFECTIVE ASSISTANCE OF COUNSEL  
 24 d. \_\_\_\_\_  
 25 Result: DENIED Date of Result: \_\_\_\_\_

26 II. Name of Court: SIXTH DISTRICT COURT OF APPEALS  
 27 Type of Proceeding: HABEAS PETITION  
 28 Grounds raised (Be brief but specific):

a. INEFFECTIVE ASSISTANCE OF COUNSEL

b. VIOLATION OF DUE PROCESS

c. VIOLATION OF PLEA AGREEMENT

d. \_\_\_\_\_

Result: DENIED JAN 5, 2007

Date of Result: \_\_\_\_\_

III. Name of Court: CALIFORNIA SUPREME COURT

HABEAS PETITION

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

a. MOTION FOR APPOINTMENT OF COUNSEL

VIOLATION OF DUE PROCESS

c. INEFFECTIVE ASSISTANCE OF COUNSEL

d. VIOLATION OF PLEA AGREEMENT.

Result: DENIED JULY 11, 2007

Date of Result: \_\_\_\_\_

IV. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes \_\_\_\_\_ No \_\_\_\_\_

Name and location of court: \_\_\_\_\_

## B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened?

Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: PETITIONER IS UNABLE TO READ OR WRITE AND HAS  
6 A THIRD GRADE READING AVERAGE AND WAS DENIED COUNSEL

7 Supporting Facts: The petitioner has had assistance in the  
8 preparation of this document but is verified to have a grade point  
9 average of the third grade, and was denied counsel. in all  
10 proceedings of his state habeas corpus.

11 Claim Two: The trial court promised petitioner he would only  
12 serve 20 percent of his sentence as condition of his plea bargain  
13 and refused to allow petitioner to withdraw his plea.

14 Supporting Facts: Trail court judge clearly informed petitioner his sentence would be  
15 reduced as a condition of his plea bargain. The law was changed  
16 after the plea which would not allow good time credits.

17 Claim Three: The trial court FASLEY PREPARED A DOCUMENT THE  
18 PETITIONER DID NOT FILE AS A HABEAS CORPUS.

19 Supporting Facts: The State Court denied relief on the grounds that  
20 petitioner filed a habeas petition and did not raise the violation  
21 of the plea agreement. Thus may not file a second habeas petition.  
22 An evidentiary hearing would prove petitioner had never filed.

23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

SEE ATTACHED MEMORANDUM

Do you have an attorney for this petition?

Yes No

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 2-14-08

Date

*[Signature]*  
Signature of Petitioner

REQUEST FOR JUDICIAL NOTICE

Petitioner requests this court appoint counsel because he has a verified inability to read past the Third Grade and requests this court appoint counsel. An evidentiary hearing would show the alleged petition filed by petitioner was fasley entered into the record to prevent relief. If the court would appoint counsel to inspect the court record and compare the prison tat (Rev. 602) petitioner was in when the habeas was filed it would determine petitioner could not have been responsible for the petition.

Petitioner provided the State Court with a copy of his reading and writing abilities and the court did not return those documents.

I declare under the penalty of perjury that my TABE SCORES are between THIRD AND FOURTH GRADE and below 7th grade.

RECEIVED

JUL 9 6 2007

CLERK SUPREME COURT

S150047

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re VICTOR HERNANDEZ on Habeas Corpus

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The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

SUPREME COURT  
**FILED**

JUL 11 2007

Frederick K. Ohlrich Clerk

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Deputy

GEORGE

---

Chief Justice



COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.

**FILED**

SEP 1 - 2006

MICHAEL J. YERLY, Clerk

In re VICTOR HERNANDEZ,  
  
on Habeas Corpus.

H030513  
(Santa Clara County  
Super. Ct. No. 186850)

By \_\_\_\_\_  
DEPUTY

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated SEP 1 2006 PREMO, J. Acting P.J.

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re VICTOR HERNANDEZ,  
  
on Habeas Corpus.

H030961  
(Santa Clara County  
Super. Ct. No. 186850)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated JAN 5 2007 PREMO, J. Acting P.J.

California Department Of Corrections And Rehabilitation  
State of California-Youth And Adult Correctional Agency

Arnold Schwarzenegger, Governor

**DEPARTMENT OF CORRECTIONS AND REHABILITATION**

Pleasant Valley State Prison

P.O. Box 8500

Coalinga, Ca. 93210



TO:

Supreme Court CA  
350 McAllister St.  
SR LA 94102

DATE:

7/18/07

Dear Correspondent:

The enclosed legal correspondence received for the following

Inmate Hernandez CDCR # LC 31695 is

(Name)

(Number)

Name +  
number do  
not match

Undeliverable at this facility and **FORWARDED** as follows:

☐ Inmate paroled/discharged on \_\_\_\_\_ to the following location: \_\_\_\_\_  
(Date) (Office/Unit Location)

☐ Inmate is currently housed at the following CDCR facility:

(Institution)

☐ Inmate is temporarily out to court and housed at the following city/county facility:

(Facility)

(Location: City, County and State)

RECEIVED

JUL 26 2007

CLERK SUPREME COURT

☐ Inmate is currently housed at the following medical facility:

(Facility)

(Location: City, County and State)

☐ Inmate is currently enroute to the following facility:

(Facility)

(Location: City, County and State)

NAME: M. S. [Signature]

PLEASANT VALLEY STATE PRISON

DATE: 7/18/07

Victor Hernandez K-31659  
P.O.Box 8504 Fac D-3-128-L  
P.O. Box 8504  
Coalinga Ca 93210

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

APPEAL FROM THE SANTA CLARA SUPERIOR COURT BEFORE THE HONORABLE JUDGE  
PAUL BERNAL OCT 7, 2006.

BY PETITIONER  
VICTOR HERNANDEZ  
IN PRO. PER.

\_\_\_\_\_

ISSUES PRESENTED

1       Petitioner alleged in a habeas petition, that as a condition of his  
2       plea agreement, that his eligibility for prison credits had been mis-  
3       represented to him by the trial court when it stated he could earn as  
4       much as twenty percent good-time work-time credits. The truth of the  
5       matter was that petitioner could not earn any credits.

6       In an additional issue petitioner requested that the trial court  
7       appoint counsel for his habeas proceeding, because petitioner was not  
8       able to read or write, and supported it with copies of his recent Tabe  
9       education scores. The court denied petitioner's habeas petition and  
10       failed to rule on his motion for appointment of counsel.

11       The Superior Court in it's ruling reasoned that the petition filed  
12       by the petitioner was impermissible and a successive attack and brought  
13       over 11 years since his guilty plea. (SEE EXHIBIT "A" MOTION FOR THE  
14       APPOINTMENT OF COUNSEL). The court argued that petitioner had filed a  
15       petition in, 2004, and should have included the instant claims in that  
16       petition.

17       In addition the court urged that the petitioner had not given any  
18       reason or explanation as to why the claim was not brought previously.

PETITIONER'S REASON FOR SEEKING REVIEW

19       The petitioner denied filing the 2004 writ and requested that the  
20       court appoint counsel in helping him determine the means by which the  
21       writ in 2004 was filed. This would have included a search to determine  
22       whether the petitioner was housed where the writ was alleged to have  
23       been filed from. Petitioner urged a review of the mailing envelope that  
24       the writ was sent in would show evidence he did not send the writ or  
25       know it was being filed.

      In sum the petitioner urges that he did not send the 2004 writ.

1 petition and provided the court with a declaration to that effect.

2 At issue and in dispute is the date that the petitioner became  
3 aware of the change in the law regarding good time credits that were  
4 promised to him as a condition of his guilty plea .

5 In sum the Superior court urges that the petitioner has failed to  
6 give any explanation as to why the claim was not brought previously is  
7 disputed because the declaration and other exhibits attached to the  
8 petitioner's Habeas petition clearly disputes the courts opinion.

9 The petitioner points to a direct response from the records dept.  
10 at the prison requesting to know how inmates whom could not read or  
11 write were informed of the change in the law or the People V Stofle  
12 (1996) 45 Cal App 4th 417, notice to all inmates was given to inmates  
13 who could not read or write. The response informed the petitioner that  
14 the court had a duty to inform the petitioner .

15 In the current petition petitioner has listed Exhibit A a copy  
16 of the document regarding notice which is not disputed by the court  
17 in its ruling and opinion.

18 Exhibit "B" is the Stofle notice which was posted in the library  
19 for everyone to read.

20 Exhibit "C" is a copy of the habeas petition filed in the Superior  
21 court which was denied.

22 Exhibit "D" is a copy of the Motion for appointment of counsel  
23 and petitioner's education scores which is undisputed that petitioner  
24 is unable to read now and was unable to read at the time of his guilty  
25 plea.

26 Exhibit "E" is a copy of the Superior Court opinion on July 8, 2006  
27 and Oct. 27, 2006 which was also denied.

DISCUSSION

1       The petitioner argues that he first requested the appointment  
2 of counsel because he is unable to understand the current proceedings  
3 and provided the court with copies of his Tabe scores dated 6-17-05  
4 and 6-28-06.

5       The Superior Court in its slip opinion failed to address this  
6 question which effects everyone in the State of California who is  
7 unable to read and write to a level to understand the proceedings.

8       The petitioner argues that he is not competent and was not in 2004  
9 and thus what ever claimed filing was not and could not have been  
10 with his knowledge.

11       The petitioner again requests this court appoint counsel to  
12 represent him on appeal in this matter because he is not able to read  
13 or write and has relied on the help of others to present these matters  
14 before the court today.

15       The court at no time in its slip opinion state petitioner's  
16 plea bargain was not violated by the trial courts inducement of  
17 a false promise. In addition the court could have corrected the error  
18 by resentencing the petitioner consistent with the terms of the promise  
19 it made to lure the petitioner into pleading guilty.

20       The second question presented is if inmates ~~who cannot even help~~  
21 read or write and the housing facility has no plan or policy for  
22 providing the same news it provides to the rest of the population :

23       (1) Are the hearing impaired, and blind inmates as well as  
24 inmates who cannot read or write entitled to the same Notice that  
25 was provided to the rest of the prison population.

26       The Superior Court's opinion violates Federal law because it  
27 does not provide equal treatment.



THE COURT HAS A DUTY TO RESPOND TO ALL CONTENTIONS

When a State prisoner files a petition to the Superior Court and frames the issues presented the Court has a duty to respond in some kind of way. A denial of a Motion is common in this State. To not respond at all does not make a record required for review by the Court of Appeals.

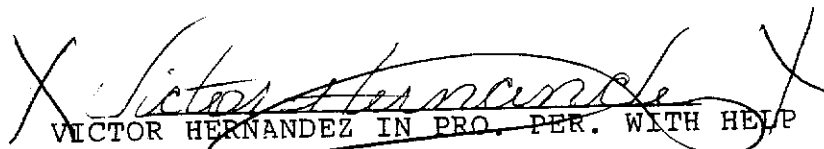
The Superior Court was clear in its slip opinion to state " By requiring that such challenges be made reasonably, promptly, we vindicate society's interest in the finality of its criminal judgments as well as the public's interest in the orderly and reasonably prompt implementation of its laws".

The petitioner argues, this rush to judgment and manner does not contain a provision for people who can not read or write and thus is a violation of Federal and State Due Process laws.

RELIEF REQUESTED

- (1) Petitioner requests that this court appoint counsel to represent him in this appeal.
- (2) Petitioner requests this court remand this issue back to the Superior Court for a ruling on his motion for appointment of counsel.
- (3) That this Court order the Superior to conform to the Plea bargain it made or allow the petitioner to withdraw his plea.

Filed this 5th day of December 2006 at pleasant Valley State Prison.

  
VICTOR HERNANDEZ IN PRO. PER. WITH HELP

Pleasant Valley State Prison  
Victor Hernandez  
K-31659# D3-128-10wer  
P.O. Box 8504  
Coalinga, Ca 93210



Legal Mail

United States District Court of Appeals  
Northern District of California.  
San Jose District of Santa Clara.

280 South First # 3035

San Jose, California, 95113-3035



THIS MAIL WAS GENERATED BY  
PLEASANT VALLEY STATE PRISON